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U. S. JUN 22 1974

IN THE

Supreme Court of the United States

OCTOBER TERM 1973

No. 73-1922

THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK, a corporation organized under the laws of the State of Illinois, GEORGE SUCHY, OLIVE MILLER, MABEL SCHAUBERGER, DONALD ROBERTSON, EDDIE BARNES and MYRTLE KAENEL, not individually, but as Trustees of the First Presbyterian Church of Forest Park,

Petitioners.

vs.

WILLIAM H. LOWE, RUDOLPH G. OHLSON, JAMES B. MUCKLE, WILLIAM J. WILLY, DANIEL J. DOMIN, CLARE E. TALLMAN, JAMES M. BUCK, CLARENCE LENNON, CALVIN H. SCHMITT, VAN R. GATHANY, WILLIAM FARNSWORTH, JOHN LIGTENBERG, J. VERNON LLOYD, DONALD E. TRUITT and KENNETH G. MORTON, as duly appointed and acting Committee on Business Affairs, Budget and Building Counsel of the Presbytery of Chicago of the United Presbyterian Church in the United States of America, and THE PRESBYTERY OF CHICAGO OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the Judgment and opinion of the Supreme Court of the State of Illinois which was entered in this cause on January 31, 1974; and Petition for Rehearing denied March 28, 1974.

OPINION BELOW

The opinion of the trial court in the Circuit Court of Cook County, Illinois, Chancery Division has not been reported; the decision of the Appellate Court of Illinois, First District, Fourth Division, Reversing the trial court is reported as case Number 56475 in 292 N.E. (2d) 211; 9 Ill.App.3d 415; the Decision of the Supreme Court of the State of Illinois, reversing the Appellate Court and affirming the Circuit Court, with dissenting opinion is reported as case Number 45679 in 308 N.E. 2d 801; ..... Ill.2d .....

BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254 (3) of Title 28 of the United States Code. The judgment and decree (with dissenting opinion) of the Supreme Court of the State of Illinois was entered January 31, 1974. A timely petition for rehearing was denied on March 28, 1974, and this Petition for Certiorari was filed within ninety days of that date.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, First Amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Fourteenth Amendment, Sec. 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ISSUES PRESENTED

1. Whether a civil court is bound to accept the dictates of an ecclesiastical tribunal on matters which are secular in nature.

2. Whether a civil court may resolve a church property dispute strictly on the basis of its determination of church polity.

3. Whether this Court's admonition to lower courts to resolve church property disputes by applying "neutral principles of law, developed for use in all property disputes" is complied with when those courts ignore muniments of title and make their determination solely on the basis of church polity and church pronouncements on subjects secular in nature.

STATEMENT OF THE CASE

This case arises as a result of the adoption by the Respondent Committee on Business Affairs, Budget and Building Counsel, acting for the Respondent Presbytery Church of Chicago of the United Presbyterian Church in the United States of America (hereafter Presbytery) on October 8, 1968, of a resolution dissolving the congregation of the Petitioner, the First Presbyterian Church of Forest Park, an Illinois not for profit corporation, (hereafter Church). Said resolution also directed that the assets of the Church be liquidated by the Committee. However, the Petitioner Trustees of the Church (hereafter Trustees), refused to convey the property as directed by the resolution.

As a result of the Trustees' refusal to convey the property, the Respondents filed suit in the Circuit Court of Cook County, Illinois for a mandatory injunction against Petitioners seeking to compel the conveyance of the Church's real and personal property.

In their Complaint, the Respondents alleged that the Petitioner Church, which admittedly held legal title to

the property in question, was a member church of the Presbytery and, as such, was subject to the rules and supervision of that body. Respondents further asserted that its resolution to dissolve the Church was made pursuant to Chapter XXXII, Section 62.11, Subsection 11, of the Form of Government of the United Presbyterian Church in the United States of America; and that Section 62.08 of Chapter XXXII of said Form of Government provides, inter alia, that:

> "Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session and their authority in respect to . . . real property shall be subject also to any rights reserved to the congregation by civil law or the by-laws of the particular church and to the permission of the Presbytery as herein provided."

Petitioners by their Answer denied that they were subject to the control and supervision of the Presbytery, and also claimed that all right and title to the real estate and personalty described in Respondents' Complaint had been conveyed outright to the Church by Respondents in a Quit Claim Deed recorded on December 16, 1958. In support of their Answer, Petitioners presented the Quit Claim Deed (which contains no reversionary or trust provision). The Petitioners also showed that all the payments required by a $25,000.00 mortgage, taken by the Church for rebuilding and renovating the Church building and property, had been made by the Church without any contribution from Respondents.

The Circuit Court denied Petitioner's motion for dismissal of the Complaint and for Summary Judgment, and awarded Respondents Judgment on the pleadings.

The Appellate Court of Illinois, First District, reversed, stating the applicable law to be that a conveyance of real estate by a church body to the trustees of a congregation where the deed does not contain an express declaration of trust or reversionary clause, will not be disturbed. (See Appendix "A").

The Appellate Court's decision was reversed by the Supreme Court of Illinois, Justice Goldenhersh dissenting. (See Appendix "B") In its opinion entered on January 31, 1974, that Court observed that the Church had been subject to the rules and regulations of the Presbytery since the Church's organization in 1913; that the relationship between the Church and the Presbytery was hierarchial in structure; and that the Church had submitted to the authority of the Presbytery with regard to matters of an ecclesiastical nature. The Court further stated that in its opinion ". . . the controlling principle to be garnered from the holdings of the . . . United States Supreme Court . . . is that where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, that church is ordinarily bound by the decisions of the ecclesiastical judicatories." 308 N.E.2d at 807. A timely Petition for rehearing was filed by Petitioners. However, that Petition was denied by the Court on March 28, 1974. (See Appendix "C").

REASONS FOR GRANTING WRIT

I.

THE DECISION OF THE ILLINOIS SUPREME COURT IN THE CASE AT BAR CLEARLY ABRIDGES RIGHTS GUARANTEED TO PETITIONERS BY THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

For the purposes of its decision, the Supreme Court of Illinois accepted as fact the following allegations found in the pleadings of the parties:

(a) That the Petitioner Church is a corporation (General Not for Profit Corporation Act, Ill. Rev. Stat., 1971, Ch. 32, par. 163 a, et seq) holding title to the property in controversy for the use and benefit of its congregation;

(b) That the real estate was conveyed by Respondents to the Petitioner Church by a Quit Claim Deed recorded on December 16, 1958;

(c) That said deed contained no reversionary or trust clause;

(d) That the Petitioner Church and the members of its congregation paid out substantial sums in rebuilding, remodeling and renovating the church building and premises and received no contributions from Respondents;

(e) That members of the Petitioner Church unanimously desire to continue to hold regular church services and are holding such services.

Notwithstanding these facts, the Supreme Court of Illinois ruled that the real estate in dispute was the property of the Respondents. In so ruling, the Court first observed that under the provisions of the Form of Government of the United Presbyterian Church, the Petitioners were required to deal with the property in accordance with the directions of the Presbytery.[1] The Court then declared that in its opinion the controlling principle to be garnered from the holding of the applicable decisions of the United States Supreme Court ". . . is that where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, the church is ordinarily bound by the decisions of the ecclesiastical judicatories. In these circumstances, the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies." 308 N.E.2d at 807.

It is submitted that by determining the property rights of the parties to the real estate and personalty solely upon the basis of church polity and church discipline, the Supreme Court of Illinois deprived Petitioners of rights guaranteed them by the First and Fourteenth Amendments. The Supreme Court of Illinois has clearly misapplied the constitutional mandate promulgated by this Court in *Watson* v. *Jones*, 80 U.S. (13 Wall) 679, 20 L.Ed. 666; *Gonzales* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131; *Kedroff*

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[1] The Quit Claim Deed from the Presbytery conveying the real estate to Petitioners was executed in 1958, years after the organization and establishment of the Petitioner Church in 1913.

v. *St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 334 U.S. 94, 97 L.Ed. 120, 73 S.Ct. 143 and most recently, *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601. Through those cases this Court has established as a constitutional rule the principle that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Hull, supra*, at 393 U.S. 499. This Court has further stated that where church structure is heirarchial in nature, a civil court may avoid becoming embroiled in controversies over matters purely ecclesiastical by accepting as conclusive the decisions or rulings on such matters which have been made by the general or parent church organization. See *Watson*, supra, and *Gonzalez*[2], supra.

The Supreme Court of Illinois has, however, improperly carried this principle one step further: that Court has interpreted the above cited cases as requiring its acceptance as *conclusive all* decisions made by a general or parent church organization where church polity is hierarchial *irregardless of subject matter*. Thus according to the Illinois Court, a civil tribunal is bound by constitutional mandate to accept as final the decisions of a church tribunal concerning such purely secular matters as property rights to real estate.

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[2] In *Gonzalez* the civil court's role was defined as follows: "in the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunal on matters *purely ecclesiastical*, although affecting civil rights, are accepted in litigation before the secular court as conclusive . . ." 280 U.S. at 16. (emphasis added)

This misapplication of constitutional doctrine by the Illinois Court has had the following results:

First, it has allowed for the judicial power of that court to be delegated to an ecclesiastical body. As was stated in the *Hull* opinion, "[t]he First Amendment prohibits a State from employing religious organizations as an arm of the civil judiciary . . ." 393 U.S. at 451. That case reaffirmed the principle that the power and the authority to adjudicate civil and property matters is vested in the court and *is not* committed to ecclesiastical tribunals. The courts however, will, as noted in *Gonzalez*, supra, accept the dictates of the highest tribunals of churches upon questions of faith and doctrine; and where the ownership of property is dependent upon the resolution of such a question they will follow the decision of the ecclesiastical tribunal and adjudge the title to the property accordingly. But where, as here, the nature of the issue determined by the ecclesiastical tribunal is not ecclesiastical in nature, but is instead determinative of property rights, and where, as here, ownership of the property is not dependent upon questions of faith or doctrine, the ecclesiastical tribunal's decision can have no authority, and the civil courts must, as commanded in *Hull*, resolve the property dispute based upon neutral principles of civil law:

> "It is obvious . . . that not every civil court decision as to property claimed by a religious organization jeopardize values protected by the First Amendment. . . . there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Hull*, supra, 393 U.S. at 449.

Second, the method employed by the Illinois Court in this case to resolve the dispute between the parties violated Petitioner's right to access to the civil courts. As was implicit in the decision of the *Appellate* Court of Illinois, and as is stated above, no issues of an ecclesiastical nature are presented by this controversy, and clear rules of civil and property law exist by which the dispute between the parties may be resolved. The following observation by Justice Goldenhersh in his dissent goes to the heart of the fallacy upon which the majority of the Supreme Court of Illinois has relied:

> "There is no question here that the congregation, on church matters, subjected itself to hierarchial control, but strain as it might the majority cannot glean from this record the facts necessary to remove this case from the rule of civil law." 308 N.E.2d at 810.

Had this dispute been between litigants of other than an ecclesiastical persuasion normal property law rules would have been applied. Above all, facts regarding how title was held and who provided the finances for the rebuilding, remodeling and maintenance of the property would not have been ignored by the Court. By failing to apply civil property rules to adjudicate this matter, the Illinois Court, in effect, closed its doors to Petitioners and provided established churches of heirarchial polity with blanket protection in matters of civil law.

II.

THE DECISION OF THE SUPREME COURT OF ILLINOIS EVIDENCES A CONFLICT AMONG THE LOWER COURTS AS TO THE SCOPE OF THIS COURT'S ADMONITION THAT CHURCH PROPERTY DISPUTES BE RESOLVED THROUGH THE APPLICATION OF "NEUTRAL PRINCIPLES OF LAW, DEVELOPED FOR USE IN ALL PROPERTY DISPUTES."

Although this Court has clearly held that church property disputes are to be resolved through the application of "neutral principles of law developed for use in all property disputes" (*Hull*, supra, at 393 U.S. 449), much confusion exists amongst the various lower courts as to what is encompassed by that direction. For instance, some lower courts have held that pursuant to the mandate of this Court they must limit their scrutiny to an examination of muniments of title. This approach is known as the "formal title" doctrine. (See *Presbyterian Church in the United States* v. *Eastern Heights Presbyterian Church* (1969), 225 Ga. 259, 167 S.E.2d 658, cert. den. 396 U.S. 1041, 90 S.Ct. 680; *Merryman* v. *Price* (1970), 147 Ind. App. 295, 259 N.E.2d 883, cert. den. 404 U.S. 852, 92 S. Ct. 89; *Maryland and Virginia Eldership of Churches of God* v. *Church of God at Sharpsburg, Inc.* (1969), 254 Md. 162, 254 A.2d 162, app. dismissed 396 U.S. 367, 90 S.Ct. 499; *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen* (1970), 21 Ohio St. 2d 154, 256 N.E. 2d 212, cert. den. 400 U.S. 327, 91 S.Ct. 54. Other courts have raised objections to the "formal title" doctrine, and have resolved church property disputes by looking to matters other than documents of title. See *Presbytery of Seattle, Inc.* v. *Rohrbouch* (1971), 79 Wash.2d 367, 485 P.2d 615, cert. den. 405 U.S. 996, 92 S.Ct. 1246, *Re Presbytery of Albany* (1970), 35 App.Div.2d 252, 315 N.Y.S.

2d 428, Affd. 28 N.Y.2d 722. 269 N.E.2d 918, app. dismissed 404 U.S. 803, 92 S.Ct. 80. An *extreme* example of the latter approach is found in the instant cause. Here, the Supreme Court of Illinois held that this Court required that it (the Illinois Court) discount the significance of available documents of title and look to church polity and discipline. This view of the constitutional mandate is the exact opposite of that taken by the Indiana court in *Merryman* v. *Price*, supra. In *Merryman*, the Indiana Court stated that in its opinion the total impact of the *Hull* decision was to render "impotent" any resolution of church property disputes which is premised upon an implied trust theory insofar as such theory is based upon principles of ecclesiastical law, church doctrine or church discipline.

Disputes over church property are becoming an increasing source of civil litigation. In the instant cause this Court is presented with muniments of title which conflict directly with pronouncements concerning use of church property promulgated by a church organization under the guise of church polity. Accordingly, this Court is presented with an ideal opportunity to: (a) resolve the serious differences which now exist amongst the lower courts in their respective interpretations of the nature and scope of the phrase "neutral principles of law developed for use in all property disputes"; and (b) provide necessary guidelines to lower civil courts which will enable them to steer a course in the resolution of church property disputes that will neither abridge the prohibition of the First Amendment nor encroach upon rights granted litigants by the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Illinois.

Respectfully submitted,

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APPENDIX "A"

56475

WILLIAM H. LOWE, et al.,

Plaintiffs-Appellees,

vs.

THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK, et al.,

Defendants-Appellants.

Appeal from the Circuit Court, Cook County.

Honorable Walter P. Dahl, Presiding.

Mr. Presiding Justice Dieringer Delivered The Opinion Of The Court:

The defendants appeal from a judgment entered in the Circuit Court of Cook County on July 28, 1971, granting the plaintiffs judgment on the pleadings and ordering the transfer of legal title to the real estate and personal property of the defendant church corporation to the plaintiffs.

On February 18, 1969, the plaintiffs, as representatives of the Presbytery of Chicago of the United Presbyterian Church in the United States of America, filed a complaint in the Circuit Court of Cook County against the First Presbyterian Church of Forest Park, an Illinois corporation, and its trustees. In that complaint the plaintiffs sought to have the court transfer legal title to the real estate and personal property of the defendant church corporation to the plaintiffs. The plaintiffs' prayer for relief was based on certain facts enumerated in their complaint, namely, that the defendant church corporation, which admittedly held legal title to the real estate and personal property in question, was a member church of the Presbytery of Chicago of the United Presbyterian Church in the United

States of America and, as such, was subject to the rules and supervision of that church. The plaintiffs' complaint also stated that on October 31, 1968, the Presbytery of Chicago adopted a resolution pursuant to Chapter XXXII, Section 62.11, Subsection 11, of the Form of Government of the United Presbyterian Church in the United States of America whereby the Presbytery of Chicago dissolved the congregation known as The First Presbyterian Church of Forest Park and directed liquidation of its assets.

The defendant church corporation resisted the directive of the Presbytery of Chicago and refused to convey its real estate and personal property to the Presbytery for liquidation. This refusal to convey the aforementioned property to the Presbytery resulted in the plaintiffs' complaint filed on February 18, 1968.

On April 15, 1969, the defendant church corporation, by and through its trustees, filed an answer to the plaintiffs' complaint. In the answer, the defendants not only denied that as a congregation it was subject to the control and supervision of the Presbytery of Chicago of the United Presbyterian Church in the United States of America, but also claimed all right and title to the real estate and personal property described in the plaintiffs' complaint had been conveyed outright by the plaintiffs in a quit-claim deed recorded on December 16, 1958. In support of their answer, the defendants presented the quit-claim deed as well as a subsequent mortgage taken by the church corporation, as exhibits. The defendants also showed the payments required by the $25,000 mortgage, taken for rebuilding and renovating the church building and property, have been made by the church corporation without any contribution from the Presbytery of Chicago.

Subsequently, the plaintiffs replied to the defendant church corporation's answer and those affirmative defenses raised therein. The plaintiffs once again relied on Chapter XXXII of the Form of Government of the United Presbyterian Church in the United States of America. More specifically, the plaintiffs relied on Section 62.08, which states in pertinent part:

> Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of the presbytery as herein provided.

Thereafter, the plaintiffs filed a motion for judgment on the pleadings based on those conclusions of fact and law enumerated in their motion. The defendant church corporation filed its answer in opposition to this motion by the plaintiffs for judgment on the pleadings as well as an affidavit in support of the answer. On July 28, 1971, the trial court granted the plaintiffs' motion for judgment on the pleadings. In the decree the trial court also ordered the defendants to transfer legal title to the real estate and personal property of The First Presbyterian Church of Forest Park to the plaintiffs. The defendants herein appeal from these findings.

The first issue presented for review is whether the trial court erred in granting judgment on the pleadings in favor of the plaintiffs and against the defendant church corporation and its trustees.

(Appellate Court Opinion)

The defendants contend the trial court's decree wherein it granted judgment on the pleadings to the plaintiffs was error, and therefore the court improperly ordered the trustees of the defendant church corporation to convey legal title to the real estate and personal property of the church corporation to the plaintiffs. The defendants base this contention on the admission in the plaintiff's pleadings that the legal ownership of the church property is in the trustees of the church corporation by virtue of the quit-claim deed recorded on December 16, 1958. In that quit-claim deed, the plaintiffs conveyed the real estate in question to the trustees of the defendant church corporation. As such, the defendants claim the trial court erred in its findings since the plaintiffs have failed to state a cause of action upon which the relief they sought could be granted. In support of this claim, the defendants rely on the case of *Calkins* v. *Cheney*, (1879) 92 Ill. 463, wherein the court was faced with a situation not unlike the instant case. The court in *Calkins* v. *Cheney* discussed the conveyance of certain real estate by a church body to the trustees of a certain congregation, in their corporate capacity. The court also took note of the fact that the deed conveying the property to the trustees of the congregation contained no express declaration of trust, nor was there any separate written declaration of trust by the trustees. In light of this fact, the court held the property belonged outright to the congregation, in its corporation capacity, and not in trust for the benefit of the parent church body as a religious denomination, nor subject to the control of any ecclesiastical judicatory. In further support of their position, the defendants cite a number of decisions which follow the holding in *Calkins* v. *Cheney*: *Dubs* v. *Egli*, (1897) 167 Ill. 514; *Illinois Classis* v. *Holben*, (1919) 286 Ill. 473;

Gloder v. *Schwinge*, (1929) 336 Ill. 551; *Pilgrim H. Church* v. *First Pilgrim H. Church*, (1969) 115 Ill. App.2d 448. In all of the decisions, the court in effect states the ruling of an ecclesiastical judicatory will not supersede or overrule the laws of the State of Illinois.

In opposition to the defendants' contention that the trial court erred, the plaintiffs rely primarily on an affidavit which they filed in opposition to the defendants' motion for summary judgment at an earlier stage in the proceedings. In that affidavit the plaintiffs attempt to establish that the defendants were under the factual control and supervision of the plaintiffs pursuant to the Form of Government of the United Presbyterian Church in the United States of America. Based on this fact, the plaintiffs ordered dissolution and liquidation of the real estate and personal property of the defendant church corporation, and later filed suit to accomplish that end. For this reason, as well as various other manifestations enumerated in the plaintiffs' pleadings, which allegedly reflect compliance by the defendant church corporation and its trustees with the Form of Government of the United Presbyterian Church in the United States of America, the plaintiffs claim the decree of the trial court granting the plaintiffs judgment on the pleadings was not error and should be allowed to stand.

The defendants' contention that the trial court erred is well taken. The only document before the trial court in support of the plaintiff's position was the affidavit in which the plaintiffs attempted to establish the defendants were under the factual control and supervision of the plaintiffs. The admissions by the plaintiffs that the title to the property in question was deeded by the plaintiffs to the trustees

of the First Presbyterian Church of Forest Park speak for themselves. Furthermore, the plaintiffs, when questioned on oral argument, denied ever holding title to the property in question. An independent search of the public record in the Cook County Recorder of Deeds office, however, shows the plaintiffs held title to the property for a period of twenty-one years from 1937 to 1958, when it was transferred to the defendants by the quitclaim deed recorded on December 16, 1958. The law in a situation as herein presented is well settled. The conveyance of certain real estate by a church body to the trustees of a congregation, in their corporate capacity, where the deed does not contain an express declaration of trust, will not be disturbed. *Calkins* v. *Cheney, supra.* The rationale for such holding is, when the title to certain property is transferred outright without an express declaration of trust, such property will not be subject to the control of any ecclesiastical judicatory. For this reason, we find the decree of the trial court granting judgment on the pleadings to the plaintiffs to be error. We also find the order of the trial court requiring defendants to transfer title of the real estate and personal property of The First Presbyterian Church of Forest Park to the plaintiffs to be error.

In view of those findings, we believe it is not necessary to comment on those remaining points presented for review.

For the reasons stated herein, the decree of the Circuit Court of Cook County is reversed.

Reversed.

BURMAN and ADESKO, JJ., concur.

APPENDIX "B"

Docket No. 45679—Agenda 28—September, 1973.

WILLIAM H. LOWE *et al.*, Appellants, v. THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK *et al.*, Appellees.

MR. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

Plaintiffs, the Presbytery of Chicago of the United Presbyterian Church in the United States of America (hereafter the Presbytery and United Presbyterian Church, respectively) and its Committee on Business Affairs, Budget and Building Counsel, filed suit for a mandatory injunction against defendants, the First Presbyterian Church of Forest Park and six individuals as trustees of the church, seeking to compel the conveyance of that church's real and personal property to the Church Extension Board of the Presbytery. The Cook County circuit court denied defendants' motion for dismissal of the complaint and for summary judgment, and awarded plaintiffs judgment on the pleadings. The First District Appellate Court reversed (*Lowe* v. *First Presbyterian Church*, 9 Ill. App. 3d 415), and we allowed plaintiffs' petition for leave to appeal.

Plaintiffs allege that on October 8, 1968, the Presbytery adopted a resolution dissolving the congregation of the First Presbyterian Church of Forest Park as of October 31, 1968, and directed that the assets of the church be liquidated by the plaintiff committee. Defendant trustees subsequently refused to convey the real property or turn over the personal property of the church, and this suit followed.

(Supreme Court Opinion)

The essence of this controversy is found in the allegations that the defendant church is a religious corporation (General Not For Profit Corporation Act, Ill. Rev. Stat. 1971, ch. 32, par. 163a *et seq.*) holding title to the real estate in controversy for the use and benefit of its congregation; and that the defendants constitute a member church of the Presbytery subject to its control and supervision. Plaintiffs assert that the defendant church is subordinate to the Presbytery and that under the provisions of chapter XXXII of the Form of Government of the United Presbyterian Church defendants are required to convey the property in accordance with the directions of the Presbytery. Chapter XXXII provides:

> "Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the United Presbyterian Church in the United States of America." Section 62.11. "Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and

to the permission of presbytery as herein provided." Section 62.08.

Plaintiffs further allege that the defendant church in all of its operations has always recognized and honored the authority of the Presbytery until directed by the Presbytery to transfer its property. Defendants, in their amended answer, state that the Church Extension Board had previously conveyed and quitclaimed the property in question to them, and that plaintiffs are without authority to order defendants to reconvey the property to the Church Extension Board. Defendants deny that their church was ever subject to the control or supervision of the Presbytery, and while they do not deny a resolution was adopted by the Presbytery dissolving the defendant church, they assert that the resolution was an assumption of authority not existing in the organization of the Presbytery. They also allege that subsequent to the incorporation of the defendant church as a religious corporation, it paid out over $30,000 in rebuilding, remodeling and renovating the church building and premises, and that this work was paid for with the proceeds of a mortgage loan of $25,000 and the remainder from the defendant church's treasury. They also state that prior to incorporation the members provided all the funds needed for the maintenanace and operation of the church building. Defendants further allege that the members of the defendant church unanimously desire to continue to hold regular church services.

Defendants' theory is that the conveyance by quitclaim deed to the defendant church was an outright transfer and, in the absence of an express declaration of trust, the property should not be subject to the control of the Presbytery.

The appellate court agreed and reversed the judgment of the trial court, relying basically on *Calkins* v. *Cheney* (1879), 92 Ill. 463. *Calkins* involved a contract by a parish of the Protestant Episcopal Church to purchase a lot upon which to erect a church and parsonage. Money for the purchase and the project was obtained by donations from members of the parish and from rental or sale of pews in the proposed church building. The congregation intended to eliminate control of the property by the Bishop and retain sole control and management thereof. To that end it was arranged to convey the property to the "Trustees of Christ Church" with no express declaration of trust in the deed or any other document. Minority members of the congregation in *Calkins* filed suit to enjoin a rector deposed by the Protestant Episcopal Church from serving as rector in the Christ Church and to enjoin the congregation from compensating him, allowing him to officiate at services, or reside in the parsonage. In deciding the case the court looked to the deed conveying the property to the trustees of Christ Church. That deed contained no express declaration of trust for the Protestant Episcopal Church in general, nor was there a separate written declaration of trust by the trustees. The court also noted the clear efforts of the congregation and trustees to avoid interference by the Bishop. On these facts the court held that the property belonged outright to the congregation of Christ Church, was not held in trust for the benefit of the parent church, and was not subject to the control of any ecclesiastical judicatory.

Defendants in this suit and the appellate court, in the absence of an express declaration of trust for the benefit

of the Presbytery or general church, have relied on *Calkins*. It is not disputed that legal title to the property here is in the trustees of the church corporation by virtue of the quitclaim deed. Therefore, assert defendants, plaintiffs have no right to order transfer of the property, since, they urge, the property is subject only to control by the local church. Defendants also cite *Dubs* v. *Egli* (1897), 167 Ill. 514; *Illinois Classic of the Reformed Church* v. *Holben*, (1919), 286 Ill. 473, and *Glader* v. *Schwinge* (1929), 336 Ill. 551, as either following *Calkins* or citing it with approval.

While this approach has surface appeal, we do not believe the holding in *Calkins* is dispositive here. Resolution of the issue here requires us to do more than simply examine the deed conveying the property. In doing so, however, it is necessary to recognize that the freedom of religion guaranteed by both Federal and State constitutions limits the scope of action by a civil court in the settlement of disputes over church property. Courts have, with varying degrees of success, sought, in resolving such controversies, to formulate principles which preserve and protect the legitimate interest of the State without undesirable or impermissible interference in the internal operation of those rules which churches have chosen as their own form of government.

The more recent view of the law relating to church property disputes attaches substantial significance to the internal structure or polity of the congregation and the parent church. (*Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 726-727, 20 L. Ed. 666, 676; *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in North America*,

334 U.S. 94, 116, 97 L. Ed. 120, 136, 73 S. Ct. 143; *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74, 95.) A major factor in resolving questions of ownership and control of church property resulting from disputes between local and national church organizations is the structure of the parent church body and its relationship to the local church. *Watson; Kedroff; Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L. Ed. 2d 658, 89 S. Ct. 601; *First Presbyterian Church* v. *First Cumberland Presbyterian Church.*

Watson is a century-old case which begins the modern view of the law on church property disputes. A Presbyterian congregation in Louisville, Kentucky, divided into two factions as the result of differing opinions regarding an oath stating opposition to slavery. Each faction claimed the local church building. The General Assembly of the Presbyterian Church decided that the majority, which favored the oath, was the legitimate successor to the congregation and entitled to use the property. The Supreme Court noted that the local congregation was a member of the national Presbyterian Church and subject to its control and system of ecclesiastical government. Therefore, since the General Assembly had decided the question, the court was bound by that decision. In classifying the questions concerning rights to property held by ecclesiastical bodies into three general categories, the court observed:

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted

to the teaching, support or spread of some specific form of religious doctrine or belief.

2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 80 U.S. (13 Wall) 679, 722-723, 20 L. Ed. 666, 674.

A note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142, 1143 (1962), also discusses the type of church organizations, indicating the three basic forms of internal church structure to be congregational, presbyterial and episcopal. In the congregational form the local congregation is autonomous, while in the presbyterial and episcopal form the structure is hierarchical.

The *Watson* opinion dealt with the third category, where the congregation was a subordinate member of a superior general church organization. The court concluded that in this class of case, "whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept

such decisions as final, and as binding on them, in their application to the case before them." 80 U.S. (13 Wall.) 679, 727, 20 L. Ed. 666, 676.

In a more recent decision by the Supreme Court in a church property dispute, *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 21 L. Ed. 2d 658, 89 S. Ct. 601, the court prohibited a civil court from awarding church property on the basis of the interpretation and significance which the civil court accorded various aspects of church doctrine. The Georgia courts had sustained a theory that implied a trust of local church property for the benefit of the general church so long as the general church adhered to the tenets of faith existing at the time of affiliation by the local churches. Whether the general church had departed from those tenets was determined by the Georgia courts. This approach allowed the civil court to determine ecclesiastical questions in the process of resolving property disputes, and was held to be in direct conflict with the holding of *Watson* which had been elevated to constitutional stature in *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church In North America*, 344 U.S. 94, 97 L. Ed. 120, 73 S. Ct. 143.

In *Kedroff* the court found unconstitutional a New York statute which approved the transfer of control of St. Nicholas Cathedral from the central governing authority of the Russian Orthodox Church to the independent Russian Church of America. The court there held that the right to use the cathedral and the right to appoint the ruling hierarch of the archdiocese of North America were matters of ecclesiastical government with which neither a secular statute nor a civil court could interfere.

(Supreme Court Opinion)

It is apparent that resolution of the controversy here requires a detailed examination of the governmental structure of the United Presbyterian Church and its relationship to the First Presbyterian Church of Forest Park.

The United Presbyterian Church is one of two substantial Presbyterian church bodies in this country. (Annot., 52 A.L.R.3d 324, 418 n.20, citing G. Weigel, Churches in North America (Schocken Books 1965, p. 34).) There are other smaller Presbyterian church bodies, all of similar governmental structure. That structure consists of a series of ascending bodies called Judicatories. At the lowest level is the Session composed of trustees, deacons and other members of the local congregation. At the secondary level is a Presbytery made up of many local Presbyterian churches such as the Presbytery of Chicago, one of the plaintiffs here. At the third level is a Synod comprised of a number of Presbyteries, and the supreme governing body is the General Assembly, the actions of which are controlling at all lower levels. Plaintiffs' allegation that this is the structure of the United Presbyterian Church is not contested, and the nature of the Presbyterian church governmental structure has been demonstrated in a series of cases collected in the annotation in 52 A.L.R.3d 324, at 417-423. It is clear that the United Presbyterian Church is hierarchical in governmental form in that each judicatory has control of those below it. The significance here of this structure is that each member Presbyterian church is subject to the rules and directions of its Presbytery, Synod and Assembly.

The remaining question is whether the First Presbyterian Church of Forest Park is a member of the general

church and therefore a part of that hierarchical structure. Plaintiffs have alleged certain events in the history of the defendant church as evidencing its affiliation with, and subordination to, the Presbytery. In their answer to plaintiffs' motion for judgment on the pleadings, defendants do not deny that these specific events occurred, but rather, deny that their occurrence indicates jurisdiction and control in the Presbytery. A recital of those events is illuminating as to the nature of the relationship which has existed between the defendant church and the Presbytery and general church.

In accordance with chapter X, section 7 of the Form of Government of the United Presbyterian Church giving a Presbytery the power to form or receive new congregations, the Presbytery of Chicago in 1913 authorized the organization of the Pioneer Presbyterian Church of Forest Park. A pastor was approved by the Presbytery and installed pursuant to chapter XV, section 1 of the Form of Government. The name was later changed with the approval and consent of the Presbytery to the First Presbyterian Church of Forest Park. The church was incorporated as a not-for-profit religious corporation in compliance with a mandatory requirement of the Form of Government (ch. XXVII, sec. 3) designed to facilitate the activities of the local churches in receiving, holding and transferring property. We believe that incorporation of the local church can hardly be viewed as releasing that church from general church control when such incorporation is required by the general church for the reasons above stated.

(Supreme Court Opinion)

In 1958 the Church Extension Board of the Presbytery of Chicago conveyed the property in question to the defendant church by quitclaim deed for a stated consideration of one dollar. One year later the Presbytery authorized the defendant church to mortgage the property. The Presbytery specified that the proceeds from the mortgage be used for remodeling, and specified the amount, term and rate of interest. The Presbytery also approved the cost of the remodeling and required that $15,000 be secured in pledges before the program was commenced. This was done pursuant to chapter XXVII, section 10a of the Form of Government, which provides that a church "shall not sell or mortgage any of its real property without written permission of the Presbytery."

The defendant church has submitted its Session minutes for review by the Presbytery on an annual basis. The Presbytery has terminated the relationship of a pastor to the defendant church, approved the retirement of a pastor and appointed a moderator to serve while the church was without an active pastor. Similarly, the Presbytery approved purchase of an organ at a specified price by the local church. In short, it seems to us clear that since the original formation of the Pioneer Presbyterian Church some 60 years ago defendants have been an integral party of the United Presbyterian Church. Their membership implies consent to its form of government (*Watson; Mary Elizabeth Blue Hull*), and their conduct during that period acknowledges its supremacy. Under that form of government, as earlier indicated, the Presbytery is authorized to direct the disposition of a local church's property upon dissolution of that church. There are no allegations in the

pleadings before us which justify interference by a civil court. See *Gonzales* v. *Roman Catholic Archbishop of Manila,* 280 U.S. 1, 74 L. Ed. 131, 50 S. Ct. 5.

Our conclusion here is not new to Illinois church law. (*First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74.) The cited case involved the effect on local church property of the reunion of two separate national organizations of the Presbyterian Church. Title to a local church building and parsonage was dependent upon the validity of the merger. The general assemblies of the two churches had already decided the question, a decision this court held binding upon it: "this court must follow the determination of that ecclesiastical court in the determination of the property rights here involved." (245 Ill. 74, 120.) In so deciding the court cited *Watson* v. *Jones,* 80 U.S. (13 Wall) 679, 20 L. Ed. 666, and remarked:

> "*** where, as here, the religious corporation or other body holding title to church property is but a subordinate member of some general church organization in which there is a superior ecclesiastical tribunal, with general jurisdiction of review and control over the inferior tribunals of the church and its members, the judgment of such tribunal is, within its legitimate sphere, binding and conclusive upon the civil courts, and that such judgment must be followed by the civil courts in the determination of such property rights as the civil courts may be called upon to adjudicate." 245 Ill. 74, at 95.

In our opinion the controlling principle to be garnered from the holdings of the cited United States Supreme Court cases and from this court's own holding in *First*

Presbyterian Church v. ***First Cumberland Presbyterian Church*** is that where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, that church is ordinarily bound by the decisions of the ecclesiastical judicatories. In these circumstances, the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies.

Accordingly, the decision of the appellate court is reversed, and the judgment of the circuit court of Cook County is affirmed.

Appellate court reversed:
circuit court affirmed.

(Supreme Court Opinion)

MR. JUSTICE GOLDENHERSH, dissenting:

I dissent. In reaching the result achieved in its opinion the majority has disregarded sound legal principles established by the earlier decisions of this court, has misinterpreted those decisions, and in order to justify its holding has drawn factual distinctions which, as will be demonstrated, do not exist. The legal principles to which I refer were evolved, after careful consideration, over a substantial period of time, and deserve better than the cavalier treatment to which the majority opinion subjects them.

I shall consider first the alleged factual distinction between this case and *Calkins* v. *Cheney*, 92 Ill. 463, upon which the appellate court relied. In its opinion the majority states:

> "In the absence of proof as to the hierarchical structure of the Protestant Episcopal Church, and whether the Christ Church was a subordinate member of that organization, the court looked to the deed conveying the property to the trustees of Christ Church."

and

> "There was no evidence in *Calkins*, as there is here, that the local church was but a subordinate member of a superior church organization and subject to its control."

In the opinion in *Calkins*, the court said:

> "We concede that the evidence here shows that Christ Church was organized as a parish of the Protestant Episcopal Church, and we doubt not it is liable to the discipline of that Church." 92 Ill. 463, at 479.

Further, *Calkins* did not, as stated by the majority, involve "a contract by a parish of the Protestant Episcopal Church to purchase a lot upon which to erect a church and parsonage." It involved an action by members of Christ Church, a parish of the Protestant Episcopal Church in the United States of America, brought to enjoin the minister, who had been deposed from the ministry by the bishop of the diocese of Illinois (see *Chase* v. *Cheney*, 58 Ill. 509), from occupying the parsonage and officiating in the church. That the majority misinterpreted the *ratio decidendi* of *Calkins*, as well as its facts, will be demonstrated later in this dissent.

The first controversy over property of a hierarchical-type church to reach this court involved a schism in a Presbyterian congregation and resulted in three opinions being written. (*Ferraria* v. *Vasconcelles*, 23 Ill. 403; *Vasconcellos* v. *Ferraria*, 27 Ill. 237; *Ferraria* v. *Vasconcellos*, 31 Ill. 25.) In 1851 the parties to that action left the island of Madeira where they were members of the Free Portuguese Church under the jurisdiction of the Free Presbyterian Church of Scotland, came to Jacksonville, Illinois, and there formed an unincorporated religious body under the name of the Free Portuguese Church. Prior to leaving Madeira they had received the proper certificate of dismissal from the Free Church Presbytery of Glasgow, which had required that they unite with the Presbyterian Church of the United States. In 1852 they purchased a lot, took title in the name of individual members of the church as trustees, and erected a church building. In 1856, with the unanimous consent of the members, they presented their letter of dismissal from the Presbytery of Glasgow and

applied for and were received in membership in the Presbytery of Sangamon. In 1858 a schism occurred in the local church as to whether the members would be rebaptized. At a meeting of the members, 105 voted to withdraw from the Sangamon Presbytery and 101 voted against withdrawal. The majority took possession of the church building, the minority filed an action for peaceable possession, and the trial court dismissed the action.

In its first opinion the court applied an implied-trust theory and held that the minority, who had not withdrawn from the Sangamon Presbytery, were the owners of the property. The court said: "The object of the donations of money, the purchase of the property and the erection of the church edifice, was to afford a place of worship according to the usages and principles of the body as then organized, and not according to the usage of some other body." (23 Ill. 403, 409-410.) The case was remanded for further proceedings, and in the second opinion the court stated that if the local congregation, according to the constitution, government and usages of the Presbyterian Church of the United States of America could withdraw from the presbytery without its consent, then the majority vote of the congregation made it independent of the Sangamon Presbytery. "The evidence in the record as it now appears, seems to establish this fact, and if so, the action of the minority was irregular and unwarranted, and by it they acquired no rights." (27 Ill. 237, 239.) The cause was remanded for further evidence on the right of a local congregation to withdraw from the presbytery without its consent.

(Supreme Court Opinion)

In its third opinion the court ordered the partition of the property, stating: "*** whatever may be the ecclesiastical right of a church, or a portion of a church, to sever its connection with a particular presbytery, with or without its consent, it does not follow, that the majority in so acting, become entitled to the property of the church, to the exclusion of the minority. *** It may with truth be said, that as the majority did not forfeit its right to the property by withdrawing from, so neither did the minority by adhering to, the presbytery. *** The proceeds of the property ought, therefore, to be divided between them, in the proportion which the seceding and adhering members of that congregation bear to each other in point of numbers." (31 Ill. 25, 53.) The partition theory was again applied in *Niccols* v. *Rugg*, 47 Ill. 47, also involving a schism in a Presbyterian church, in which the court specifically referred to and followed *Ferraria* v. *Vasconcelles*.

In *Calkins* v. *Cheney*, 92 Ill. 463, upon which the appellate court principally relied, the plaintiffs contended that under the doctrine of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666, or *Ferraria* v. *Vasconcelles*, 23 Ill. 403, in which the implied-trust doctrine was applied to a hierarchical church, they, as the adherents to the tenets of the Protestant Episcopal faith, were entitled to enjoin the defendant from further officiating in the church or occupying the premises. The court did not discuss *Watson* v. *Jones*, explicitly refused to find an implied trust, and, after discussing various sections of the religious-corporation statute, stated:

> "From these references to the statute, it is clear that the trustees of an incorporated religious society

or association do not hold the property, in the absence of a declared, or at least clearly implied trust, for any church in general, nor for the benefit of any peculiar doctrines or tenets of faith and practice in religious matters, but solely for the society or congregation whose officers they are; and that they are not, in the discharge of their duties, subject to the control of any ecclesiastical judicatory.

* * *

The incorporated societies here contemplated are *** civil corporations to be controlled and managed under the general principles of law applicable to such corporations, as administered by the civil courts." 92 Ill. 463, 476, 477, 478.

In *Dubs* v. *Egli*, 167 Ill. 514, there was a dispute in the Bethany Church and Society of Highland Park over which of two factions had the right to use the church property. The basis of the controversy is set forth in *Schweiker* v. *Husser*, 146 Ill. 399. When the property in *Dubs* was purchased, the discipline of the hierarchical denomination provided that all conveyances of land for the erection of a house of worship should provide: "In trust to be occupied, used and maintained as a place of divine worship by the ministry and membership of the Evangelical Association of North America, with power to dispose of and convey the same, subject to the discipline, usages and ministerial appointment of such church or association, as from time to time authorized and declared by the general conference of said association and the annual conference in whose bounds the said premises are situated." (167 Ill. 514, 518.) The members of the congregation wanted to retain control

of the property and took title in three members as trustees of Bethany Church of Highland Park without any express declaration of trust. The congregation was incorporated as a religious corporation. The court said: "This case is thus clearly brought within the doctrine laid down by this court in the case of *Calkins* v. *Cheney*, 92 Ill. 463. It was there held, that property, purchased and conveyed under similar circumstances to those existing here, belongs to the society or congregation in its corporate capacity, not in trust for the benefit of the church at large as a religious denomination, but independent of it, and not subject to the control of any ecclesiastical judicatory." 167 Ill. 514, at 519.

In *Illinois Classis of the Reformed Church* v. *Holben*, 286 Ill. 473, two congregations of the Reformed Church in the United States had withdrawn from that denomination and become members of the Presbyterian Church of the United States of America. These congregations, located at Mt. Zion and Stonington, had comprised the Mt. Zion charge which was under the Illinois Classis of the Reformed Church in the United States. The Mt. Zion congregation took title to the Mt. Zion church property in named members of the congregation as trustees of the Mt. Zion Reformed Church and the Mt. Zion Cemetery Association. The Stonington congregation took title to the Stonington church property in named members of the congregation as trustees for the Mt. Zion charge of the Reformed Church. Neither of the local congregations was incorporated.

Later each congregation met and voted to have its respective consistory seek a letter of dismissal from the

Illinois Classis in order that they might join the Springfield Presbytery. The Illinois Classis determined that it had no authority to grant letters of dismissal. The trustees of the two congregations then conveyed their property to a straw party who conveyed the property, respectively, to the trustees of the Mt. Zion Presbyterian Church and the trustees of the First Presbyterian Church at Stonington. The Illinois Classis then filed an action to quiet title against the trustees of the two congregations. I alleged that the attempt to withdraw from the Reformed Church and join the Presbyterian Church was contrary to the constitution and laws of the Reformed Church and constituted a dissolution of the local congregations, and that under the constitution and laws of the Reformed Church, when a congregation is dissolved, its property becomes vested in the general body of the church.

Citing *Calkins* v. *Cheney*, the court in *Illinois Classis* stated: "The deeds contain no express declaration of trust for the benefit of the general body of any church denomination or for the teaching or practice of any particular religious principles or doctrines or faith in religious matters. Such deeds are solely for the benefit of the congregations whose trustees are named as the grantees, and the right to the possession, control, and use of the property is vested solely in them. *** It is immaterial whether the grantees were incorporated or not." (286 Ill. 473, at 476-7.) In so holding, the court applied a formal-title doctrine rather than the civil-corporation doctrine applied in *Calkins* v. *Cheney* and *Dubs* v. *Egli*. The formal-title doctrine was again applied in *Glader* v. *Schwinge*, 336 Ill. 551.

(Supreme Court Opinion)

The majority's reliance upon *Gonzales* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 74 L. Ed. 131, 50 S. Ct. 5, and *First Presbyterian Church* v. *First Cumberland Presbyterian Church*, 245 Ill. 74, is misplaced. In *Gonzales* the question presented was whether the petitioner was legally entitled to a collative chaplaincy in the Roman Catholic Archdiocese of Manila. The Supreme Court held that the determination of the petitioner's fitness for the assignment was a canonical act and the property rights involved were an incident of the office of chaplain. It is clear from the opinion that had the issue presented required interpretation of the terms of the trust, legal principles, and not canon law, would have governed.

In *First Presbyterian* the court was not called upon to decide a property question. That case reached the court in the posture of the opposing parties contending, on the one hand, that the reunion of the Presbyterian Church and the Cumberland Presbyterian Church effected by their national assemblies was valid, and on the other that it was invalid. Involved in the case was the property of the Cumberland Presbyterian Church in Lincoln. The court said "**** the determination of the question where the title to said church property now rests will necessarily involve a decision of the question whether the reunion of the Cumberland church with the Presbyterian church, as declared by the general assemblies of the two churches in 1906, was valid and binding upon both churches and the members of the said churches and their church judicatories, or whether said reunion was invalid and void." (245 Ill. 74, 81.) "**** the question whether the reunion between the Cumberland church and the Presbyterian church was

a valid reunion was a question for the general assemblies of the two churches to decide, sitting as the highest ecclesiastical judicatories of those churches, and that the general assembly of the Cumberland church, having held the reunion valid and binding upon the Cumberland church, its judgment is binding upon this court ***." 245 Ill. 74, 119-20.

This court has stated, explicitly and clearly, the distinction between a controversy which presents a question to be determined under ecclesiastical law and one to be decided under principles of civil law.

In *Marie Methodist Episcopal Church* v. *Trinity Methodist Episcopal Church,* 253 Ill. 21, 28, plaintiffs sought conveyance of certain property, contending, *inter alia,* that the general conference of the Methodist Church had decided the issue contrary to an earlier decision of the court (205 Ill. 601) and that the decision of the general conference was binding on the court and the parties. In rejecting the contention the court said, "The judicial power and the authority to adjudicate upon civil and property rights is vested in the courts and is not committed to ecclesiastical tribunals. The courts, however, accept the decisions of the highest tribunals of churches upon questions of faith and doctrine, and where the ownership of property is dependent upon the decision of such a question they will follow the construction of the ecclesiastical tribunal and adjudge the title to the property accordingly. *** The general conference did not determine an ecclesiastical question but decided upon the property rights of the parties to this litigation, and we cannot admit the authority of the general conference to determine such rights."

The majority has strained to read into this record some implied submission to hierarchical control which would subject the property to the plaintiffs' control, but recitation of past conduct is of no significance. There is no question here that the congregation, on church matters, subjected itself to hierarchical control, but strain as it might the majority cannot glean from this record the facts necessary to remove this case from the rule of civil law. If the plaintiffs, in addition to the hierarchical control exercised over ecclesiastical matters, desired to control church property, a simple provision in the defendant church's bylaws or a reversionary clause in the deed by means of which the property was conveyed would have accomplished that result. It did not, however, pursue either course, and this case falls squarely under the doctrine of *Calkins* v. *Cheney*.

As the citations in this dissent demonstrate, our predecessors on this court, after careful consideration, have developed and applied the corporate-title doctrine of *Calkins* v. *Cheney* and the formal-title doctrine of *Illinois Classis* v. *Holben*. These are "sound legal principles of law developed for use in all property disputes" to which the Supreme Court referred in *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 21 L. Ed. 2d 658, 665, 89 S. Ct. 601, 606. If there are valid reasons for departing from long-established and clearly enunciated precedents, and none are reflected by either this record or the opinion of the majority, then they should be forthrightly overruled and not circumvented by means of nonexistent distinctions.

APPENDIX "C"

(Letterhead of)
Clerk of the Supreme Court
Springfield
62706

March 28, 1974

Mr. Richard Price
Attorney at Law
77 W. Washington St.
Suite 1119
Chicago, Ill. 60602

No. 45679—William H. Lowe, et al., etc., et al., appellants, vs. The First Presbyterian Church of Forest Park, a corporation, etc., et al., etc., appellees. Appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for rehearing in the above entitled cause. Opinion modified on page 3 and pages 8 and 9 of the dissenting opinion upon denial of petition for rehearing, a copy of each page as modified being enclosed.

Very truly yours,

/s/ Justin Taft
Clerk of the Supreme Court

Supreme Court, U. S.
FILED
AUG 3 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1922

THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK, ET AL.,

Petitioners,

vs.

WILLIAM LOWE, ET AL., AND THE PRESBYTERY OF CHICAGO OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1922

THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK, ET AL.,

Petitioners,

vs.

WILLIAM LOWE, ET AL., AND THE PRESBYTERY OF CHICAGO OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioners seek review of an Illinois decision* that requires a local church (petitioner) to convey its property to a superior church organization (the respondent Presbytery of Chicago). Both the local church and the presbytery are a part of a national church organization (United Presbyterian Church in the United States of America). The local church had received the property from the presbytery by an unqualified deed of conveyance. The national church's constitution provides that a presbytery has authority, on dissolution of a local church, to direct the disposition of the local church's property. An Illinois trial court and the Illinois Supreme Court gave effect to this provision in requiring the local church to convey the property as directed by

* *Lowe* v. *First Presbyterian Church of Forest Park*, 308 N.E. 2d 801 (Sup. Ct. Ill. Jan. 1974).

the presbytery. Petitioners claim this decision denies them rights guaranteed by the First and Fourteenth Amendments to the United States Constitution by allowing judicial power "to be delegated to an ecclesiastical body" and violating their "right to access to the civil courts". Their contention is based upon a faulty analysis of recent decisions on church property disputes as well as a misconception of the facts of the case.

Point I of this brief refutes petitioners' contention that only formal documents of title are decisive of church property disputes under the First Amendment; and demonstrates this Court's denial of review in recent cases making the same contention.

Point II shows that the Illinois court's decision is in complete accord with neutral principles of law without inquiry into or determination of religious doctrine.

It will appear that this case falls far short of presenting reasons of the kind set forth in this Court's Rule 19 for granting *certiorari*. The case does not involve a federal question of substance, nor a question that this Court has not determined, nor a decision that is contrary to holdings of this Court.

I.

"FORMAL TITLE" DOCTRINE NOT CONTROLLING

A. First Amendment Does Not Restrict Church Property Decisions to Formal Title Documents

In this Court's latest full opinion on church property disputes, *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1968), three crucial sentences (p. 449) explain the controlling considerations under the First Amendment:

> "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.

> But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."

Thus a church property dispute may be decided by the application of "neutral principles of law" but not by resolving "controversies over religious doctrine and practice". Petitioners argue that a third idea, a so-called "formal title" doctrine, provides another approach, which they contend forbids the use of non-title materials in deciding such a dispute, and they complain that the lower court's decision here is an "extreme example" of rejecting that idea. There is no basis for these contentions in decisions of this Court or of state courts.

The "formal title" doctrine was not mentioned in the *Hull* case, although it was referred to in Mr. Justice Brennan's supplementary concurrence in the *per curiam* opinion of *Maryland and Virginia Churches* v. *Sharpsburg Church*, 396 U.S. 367, 368 (1970). The legal and factual materials used there in deciding a church property dispute included the constitution of a superior church organization. Yet the brief *per curiam* opinion stated that the state court decision "involved no inquiry into religious doctrine". Thus the "formal title" doctrine was not followed since non-title documents were considered. The concurrence (p. 370) did state that under the "formal title" theory courts can determine church ownership "by studying deeds, reverter clauses, and general state corporation laws". But there was no indication whatever that the courts were restricted to these materials.

On the contrary, the concurring opinion explained that a state "may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters". One such approach, it was said, is that of *Watson* v. *Jones*, 80 U.S. (13 Wall. 666) 679 (1872), the great church property case which the Illinois Supreme Court carefully followed in the present case. Mr. Justice Brennan ap-

proved the *Watson* approach, although it was said to require determination of the appropriate church governing body "without the resolution of doctrinal questions and without extensive inquiry into religious polity" (p. 370). And the "neutral principles" theory of the *Hull* case was said to provide "another means" for resolving property litigation.

It would be an anomaly in our legal system to confine the evidence to "documents of title". Property rights are not determined solely by such documents. It is a centuries-old process for the courts to enforce obligations of various kinds that are not a part of the formal title to land. A simple example is a contract to convey real estate. The title documents are all in the seller's name without any mention of the purchaser. Yet the courts grant specific performance of the seller's informal promise to convey to the purchaser. The purpose and function of formal title deeds and their recording are to facilitate transfers by protecting *bona fide* purchasers who rely on the formal record.

In the present case, the petitioner local church, as all other local Presbyterian churches, has consented to the provision of the Form of Government of the national church that, on dissolution of the local church, the presbytery directs what shall be done with the local church's property. The Form of Government imposed an obligation on the local church to convey the property just as effectively as a seller's promise to convey his land. The First Amendment does not require the exclusion of the superior church's constitution as a source of a local church's property obligation.

B. Decision of Court Below Accords with Recent Denials of Review

In eight very recent cases this Court has declined to review state church property decisions that were based on materials other than "formal title" instruments:

Oklahoma: *Presbytery of Cimmaron* v. *Westminster Presbyterian Church*, 515 P. 2d 211 (Okl. 1973), *cert. den.* April 22, 1974, Docket No. 73-1362.

Washington: (1) *Presbytery of Seattle* v. *Rohrbaugh*, 79 Wash. 2d 367, 485 P. 2d 615 (1971), *cert. den.* 405 U.S. 996.

(2) *Hillcrest Presbyterian Church* v. *Presbytery of Seattle*, ... Wash. 2d ....., ... P. 2d ....., *cert. den.* April 22, 1974, Docket No. 1350.

New York: *Second United Presbyterian Church* v. *Presbytery of Albany*, 315 NYS 2d 428 (1970), aff'd. 28 NY 2d 722, 269 N.E. 2d 918, app. dis. 404 U.S. 803.

Pennsylvania: (1) *St. John Chrysostom Greek Catholic Church* v. *Elko*, 436 Pa. 243, 259 A. 2d 419 (1969), *cert. den.* 399 U.S. 920.

(2) *St. Michael and Archangel Russian Orthodox Church* v. *Uhniat*, 436 Pa. 222, 259 A. 2d 862 (1969), *cert. den.* 400 U.S. 823.

(3) *Western Pennsylvania Conf. of Methodist Church* v. *Everson Evangelical Church*, 312 A. 2d 35 (Sup. Ct. Pa. 1973), app. dis. April 15, 1974, Docket No. 2197.

Petitioners (p. 12) say of four contrasting court decisions in which a superior church organization was denied control over a local church's property, "lower courts have held that pursuant to the mandate of this Court they must limit their scrutiny to an examination of muniments of title". Neither this Court nor the state courts so held in the cited cases:

In *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg*, 254 A. 2d 162 (Md. Ct. of App. 1969), the court discussed, among other things, the constitution of the superior church but found nothing there that gave the superior church control of the property of a withdrawing local church. The court's consideration of the church constitution shows that the

court was not following the "formal title" doctrine, which was not mentioned. This Court, in dismissing the appeal, expressly stated *per curiam* that the lower court's decision "involved no inquiry into religious doctrine" (396 U.S. at 368).

Presbyterian Church in the United States v. *Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E. 2d 658 (1969), is the Georgia Supreme Court's decision on remandment of the *Hull* case reported at 393 U.S. 440. This Court denied *certiorari*, 396 U.S. 1041. The local church on withdrawal from the general church was held entitled to keep its property, to which it had a deed of conveyance. The general church was denied control of the local church's property because "the constitution of the general church contains no provision governing the situation here" (159 S.E. 2d at 694). Again, the court's consideration of the general church constitution indicates it was not following the formal title doctrine, which was not mentioned.

Serbian Orthodox Church Congregation of St. Demetrius v. *Keleman*, 21 Ohio St. 2d 154, 256 N.E. 2d 212 (1970), *cert. den.* 400 U.S. 827, 91 S. Ct. 54, reversed a trial court's award of local church property to a general church. The "formal title" doctrine was discussed in the opinion, but the reason for the decision was that the trial court's finding was based on a "judicial determination that plaintiff has acted *contra* to the doctrine and tenets of the church" (p. 216) and that the local church was entitled to the property by reference to legal materials "not requiring the resolution of religious tenets or doctrine".

In *Merryman* v. *Price*, 259 N.E. 2d 883 (Ind. App. 1970), *cert. den.* 404 U.S. 852, the opinion discussed "neutral principles of real property law" and the "formal title" doctrine, but the decisive consideration was a trial court's finding that the local church had not become a part of the general church, which had resulted from the merger of two national organizations. Petitioners' contention that the *Merryman* case adopted the "formal title" doctrine is refuted by a later Indiana case, *United*

Methodist Church v. *St. Louis Crossing Independent Methodist Church*, 276 N.E. 2d 916, 922 (Ind. App. 1972), where the court decided that local church property was held for the use of the general church. After discussing the *Merryman* case, the opinion explained that this Court's *Hull* decision and also Indiana and other cases make it clear that "reference by a court to those sections of a controlling church discipline which pertain to the holding of church property . . . is embraced in the concept of neutral principles of law" and the establishment clause of the First Amendment is not violated "where the reference . . . does not involve ecclesiastical inquiries".

It thus appears that this Court has not denied review of any state court decision restricting the consideration of a church property dispute to formal instruments of the title. On the other hand, in at least eight cases in the last five years, this Court has denied review where a church property dispute was decided on the basis of materials other than formal title instruments. This is because the state court decisions, as that in the case at bar, applied "neutral principles of law" without the resolution of any controversy over religious doctrine (*Hull*, 393 U. S. at 449) and "without extensive inquiry into religious polity" (*Sharpsburg* concurrence, 396 U.S. at 370). Court decisions do not support petitioners' attempt to create an interest in this case by representations about judicial acceptance of the "formal title" doctrine and "confusions" over the application of neutral principles.

II.

SETTLED GENERAL RULES ("NEUTRAL PRINCIPLES") OF STATE LAW WERE APPLIED BY LOWER COURT

It is easy to demonstrate how the lower court's decision is based on neutral principles of law that were developed for use in all property disputes. The background facts, not adequately stated in the *certiorari* petition although carefully explained in the opinion below (308 N.E. 2d at 806), are clear. In 1913

the respondent authorized the organization of the Pioneer Presbyterian Church of Forest Park, which was the petitioner local church under a prior name. The local church was authorized in accordance with the Form of Government of the United Presbyterian Church in the United States of America,* to which the Chicago presbytery and the local church were subordinate. The local church was incorporated under Illinois law as required by the national organization's constitution or bylaws, known as "Form of Government". In 1958 an agency of the presbytery conveyed the property in question to the local church for $1.00 by an unqualified deed. The presbytery continued to supervise the property by reviewing mortgage terms, improvement expenditures, etc. As the opinion below stated, "Since the original formation of the Pioneer Presbyterian Church some sixty years ago, defendants [petitioners] have been an integral part of the United Presbyterian Church".

On October 8, 1968, the presbytery adopted a resolution dissolving the congregation of the petitioner local church and directed its liquidation. The Presbyterian Form of Government provides, "Whenever . . . a particular church is formally dissolved by the presbytery", the church's property shall be held and used "as the presbytery may direct" (Abst. 3-4). The presbytery directed the title to the local church's property to be placed in an agency of the presbytery. When the local church refused to convey the property as demanded, this action was brought to compel the conveyance.

The applicable legal principle, stated at the end of the lower court's opinion (p. 807), is that where a local church is a subordinate member of a superior general church organization and has consented to its form of government, the local church is

* A different national organization, although named "Presbyterian Church in the United States", was involved in *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1968). Although that organization was hierarchical, the case did not involve the dissolution of a local church by a presbytery under a church rule that, on dissolution, the property of the local church shall be "held, used, and applied" as the presbytery directs.

bound by the general church's decisions. In Illinois the principle goes back at least as far as a 1910 decision* involving the same general church. The court there stated that, where a religious corporation holding title to church property is subordinate to some general church organization in which a superior tribunal has control over church members, the judgment of that tribunal must be followed by the civil courts "in the determination of such property rights as the civil courts may be called upon to adjudicate". The 1910 decision (as the present one) relied strongly on the analysis in the leading early church decision in this country, *Watson* v. *Jones,* 80 U.S. (13 Wall. 666) 679 (1872), which fully explained the legal effect of the hierarchical organization of certain churches.

The principles that general church rules control the disposition of local church property is an application of a wider principle stated in one sentence in the *Watson* case:

> "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." (13 Wall. 676.)

The broad principle appeared in Mr. Justice Brandeis' statement for a unanimous court in *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929), that the decisions of church tribunals (absent fraud, collusion, or arbitrariness) are accepted in litigation over civil rights "because the parties in interest made them so by contract or otherwise". He explained further,

> "Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations".

An Illinois decision was cited in *Gonzalez* for the broad principle, *Engel* v. *Walsh,* 258 Ill. 98, 103 (1913). There, in holding that "a union member was bound by a union decision", the court said that each member of "churches, lodges, labor unions

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* *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74, 91 N.E. 761 (1910).

and other like voluntary associations" agrees on becoming a member "either by express stipulation or implication . . . to abide by all rules and regulations adopted by the organization".

The widespread judicial enforcement of a general church's property rules against a local church is indicated by many court decisions. A recent annotation, "Determination of Property Rights Between Local Church and Parent Church Body: Modern View", 52 ALR 3rd 324-427 (1973), reviews hundreds of court decisions. Noting the hierarchical structure of the Presbyterian Church and litigation over local churches' claimed right to withdraw from the general church and retain local church property, the annotation states (p. 418) that, as cited cases illustrate,

> "This right is uniformly denied, on the ground that the local Presbyterian Church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas".

Decisions of the courts of Delaware, Florida, Indiana, New Jersey, New York, North Dakota, and Washington are cited,* in addition to *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1972).

For the courts to enforce the property rules of a church organization is not to "establish" a state religious organization or interfere with the religious rights of dissident church members. The reason is that church members, as those of associations such as labor unions, clubs, etc., have promised to abide by and have consented to the rules of the organization by becoming members

* Two recent similar state court decisions are *Wyche* v. *Alexander*, 189 S.E. 2d 608 (Ct. of App. No. Car. 1972), *cert. den.* by Sup. Ct. No. Car., 191 S.E. 2d 361; *Norfolk Presbytery* v. *Bollinger*, 201 S.E. 2d 752 (Sup. Ct. Va. Jan. 1974). In the latter case, the opinion stated: "We do not construe *Hull* as requiring that courts apply neutral principles of law by considering only the record title to church property . . . As express trusts for supercongregational churches are invalid under Virginia law no implied trusts for such denominations may be upheld. But this does not mean that our civil courts are powerless to prevent a hierarchical church from being deprived of contractual rights in church property held by trustees of a local congregation" (201 S.E. 2d at 756 and 758).

of it. The non-religious nature of this legal principle was indicated by this Court's explanation of it in the *Watson* and *Gonzalez* cases noted above.

The Illinois Supreme Court's decision in this case complied strictly with this Court's recent discussions and holdings on church property disputes. The evidence showed with overwhelming detail that the petitioner local church was a subordinate part of the general church; and it is beyond dispute that the general church's constitution required the local church, on its dissolution, to reconvey the property in question despite its unqualified deed of conveyance. The Illinois Supreme Court applied "neutral principles of law, developed for use in all property disputes", without "the resolution . . . of . . . religious doctrine and practice" (*Hull*, p. 449), and "without extensive inquiry into religious polity" (concurrence, *Sharpsburg*, p. 370). In giving effect to the presbytery's direction to the local church to reconvey the property, the Illinois Supreme Court did not delegate power to the presbytery nor deny the local church's right to a judicial decision. The court merely enforced the local church's obligation to convey the property in accordance with the organizational principles to which it had bound itself.

CONCLUSION

Respondents urge the denial of the petition for *certiorari*.

Respectfully submitted,

July 1974

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